

[To accompany bill H. R. No. 435.]

CAPTAIN LEWIS WARRINGTON AND OTHERS.

MEMORIAL

OF

LEWIS WARRINGTON, CAPTAIN IN THE U. S. NAVY,

(In behalf of himself and the officers and crew of the U. S. sloop-of-war Peacock,)

Praying that the one half of the proceeds of the Epervier and goods, which went into the treasury by mistake, be restored to the officers and crew of said vessel, it having been decreed to them by the United States court as captors.

APRIL 26, 1848.

Ordered to be printed.

The memorial of the undersigned, a captain in the navy of the United States, in behalf of himself and of the officers and crew of the sloop-of-war Peacock at the time of the capture of the Epervier, most respectfully represents, that on the 29th of April, 1814, they captured, after a well contested action, his Britannic Majesty's sloop-of-war Epervier, and conducted her, with her crew, into the port of Savannah. That she was there libelled, and decreed by the district court of the United States as "prize of war to the captors," the decree of the court being, as shown by a certified copy thereof from the records of that court, herewith filed, (being exhibit A,) at page 7 of said exhibit, as follows, viz: "It is ordered, adjudged, and decreed that the said sloop-of-war Epervier, her tackle, apparel, guns, and other implements of war, be condemned as prize of war to the captors, and sold after due notice by the marshal, and the proceeds be distributed as the law directs respecting captures made by the public armed vessels of the United States, after payment of costs and charges." The Epervier had on board certain specie, which was also decreed by said court (as shown by said exhibit A, at page 12,) as "prize of war to the captors, to be distributed." "The captors" were the undersigned and the other officers, and the crew. Notwithstanding this, Mr. John Eppinger, the marshal, after selling the Epervier and receiving the proceeds, made the mistake of paying one half thereof, and one half of the specie captured in the Epervier, into the treasury of the United States; and the object of this memorial is to make a respectful application and demand that this their property be restored to them.

The law of the United States passed April 23, 1800, "directs respecting captures," as follows: "The proceeds of all ships and vessels, and the

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goods taken on board of them, which shall be adjudged good prize, shall, when of equal or superior force to the vessel or vessels making the capture, *be the sole property of the captors.*"

That the Epervier was of "equal force" to the Peacock, is shown as follows: The law of July 16, 1798, shows that the "*force of a vessel is the number of guns*," which law is as follows: "Be it enacted, &c., That the sum of six hundred thousand dollars shall be, and hereby is appropriated, to enable the President of the United States to cause to be built and equipped three ships or vessels, to be of a *force* not less than thirty-two *guns* each, and of the dimensions and model which he shall deem most advantageous," &c. That the Epervier was of equal force to the Peacock, is officially shown by the United States as follows: The Secretary of the Navy, in an official report to the Senate dated March 14, 1814, transmits a table of the names, rates, &c., of the vessels of the United States navy, of which exhibit B is an extract, in which the force of the Peacock is shown to be eighteen guns; and said Secretary, in an official report to the Senate dated October 3, 1814, transmits the official report of the commander of the Peacock of the capture of the Epervier, of which exhibit C is a copy, in which the Epervier is officially stated to be of the force of *eighteen* guns. Also, the official report of Lieut. John B. Nicolson of her arrival (exhibit D) proves her to be of the force of *eighteen* guns. Thus the Peacock and Epervier being proved by United States *official* reports to be of "equal force," "the proceeds of the Epervier," and "the goods taken on board," were, in the language of said law, "the sole property of the captors;" and therefore the decree of the court as above mentioned, that the Epervier and specie was "prize of war to the captors," was in accordance with said law and said official reports of the Navy Department.

That the Navy Department considered the Epervier and goods as *decreed to the captors*, is shown by an official communication from it, marked exhibit E, which is as follows: "Enclosed herewith is a copy of the opinion of the Attorney General of the United States on the claim of the marshal of Georgia, for a commission of one and a quarter per cent. on the amount of specie *DECREED TO THE CAPTORS* of the sloop Epervier; by which opinion the claim appears to be inadmissible." This claim of the marshal was for $1\frac{1}{4}$ per cent., under the act of Congress of the 28th of February, 1799; and that the $1\frac{1}{4}$ per cent. was charged on the whole amount of specie captured, viz: \$117,903, is shown by the amount charged, viz: \$1,473 78, at page 13 of exhibit A, which amount is *just* $1\frac{1}{4}$ per cent. on the whole. As the commission charged by the marshal thus was on the *whole* specie captured, the Secretary of the Navy, in alluding in that letter to the commission of $1\frac{1}{4}$ per cent. on "the amount of specie decreed to the *captors* of the Epervier," certainly declares that the *whole* of the specie was decreed to the captors.

Three other official communications of the Navy Department demonstrate that it was the decision of that department that the captors possessed the sole interest in the Epervier, viz: one of June 11, 1814, (exhibit F,) states: "In respect to your prize, the Epervier, * * I am ready to negotiate with any agent, authorized *by the captors*, for the purchase of the *Epervier*." This communication does not state for the half of the Epervier, but for *the Epervier*, thereby expressing the *whole* of the Epervier. The communication of June 16, 1814, (exhibit G,) states: "It is, however,

proper that the prize and her stores should be preserved in good order for *the benefit of the captors*;" thus stating, for the benefit of the *captors*—not for the benefit of the captors and the United States jointly. The letter of the Navy Department of July 24, 1814, (exhibit H,) states: "I regret that no agent for the captors has yet appeared to negotiate with this department for the sale of *the Epervier*." This letter does not state, for the captors half of the *Epervier*, but for "*the Epervier*," thereby expressing *the whole* of the *Epervier*.

Notwithstanding all these facts, the marshal, Mr. John Eppinger, (who was in the habit of making mistakes, as shown on the preceding page in relation to the commission,) after selling the *Epervier* and receiving the proceeds of the sale, made the mistake of paying one half of the same, and one half of the specie captured, into the treasury of the United States, as shown by the receipts of James Marshall, cashier, at page 13 of exhibit A, and as also shown by the official statement of said John Eppinger, marshal, dated August 12, 1814, (exhibit I;) and but for your memorialists being away at sea at the time, *contending for their COUNTRY'S rights, in neglect of their own*, they would have prevented this mistake.

That their title to it was a *VESTED right*—which, so far from being divested by the mistake of *the district marshal* in paying it into the treasury instead of to the captors, *could not be divested even by the extensive power of Congress itself*, with its act signed by the Executive—is shown by the solemn decision of the Attorney General of October 17, 1820, in another prize case, at page 296 of published "*Opinions of Attorneys General*," as follows: "In my opinion, Congress intended nothing more by this act than to substitute the \$255,000 in lieu of the proceeds of the sale of the prize vessels, had they been sold under the decree of court, without the most distant intention of affecting, in any manner, the mode of distribution, either as to the quantum or the persons authorized to take; indeed, they COULD NOT, IF THEY HAD INTENDED IT, have produced such an effect, because that would have been to *DIVEST A VESTED RIGHT*."

By *compound* interest, the amount due your memorialists would have increased to thirteen times the original sum—which advantage the United States have had from the use of memorialist's property; but your memorialists pray for the restoration of the principal *only*. By the capture the memorialists furnished a valuable vessel, at a time when needed, to the government, and a considerable amount in specie when its credit was low, and they cannot believe that the nation, under *all these* circumstances, will withhold this *debt due* them.

The memorialists respectfully represent that these proceeds—thus, 1st, by law solemnly enacted to be "*the sole property*" of the captors; 2d, thus solemnly decreed by the court to be *their property*; 3d, thus shown by United States official reports and law to be a capture from an "equal," and thus a *vested right* acquired by the captors to the whole; and, 4th, admitted by the Navy Department, in four official communications, to be *their property—is their property*. They therefore memorialize your honorable body, and hereby make a respectful application that their property be restored to them, in accordance with the constitutional provision, "*nor shall private property be taken for public use without just compensation*."

L. WARRINGTON,

For himself and the officers and crew of the
United States sloop *Peacock*.

EXHIBIT A.

DISTRICT OF GEORGIA, *in the admiralty.*

To the honorable William Stephens, judge of the district court of the United States for the Georgia district.

The libel of Lewis Warrington, esq., commander of the United States sloop-of-war Peacock, on behalf as well of the United States, as of himself and the officers and crew of the said United States sloop-of-war Peacock, against the British sloop-of-war Epervier, her tackle, apparel, and guns, and other implements of war.

The said libellant, for and on behalf as aforesaid, doth hereby propound, allege, and declare to this honorable court as follows, to wit:

First. That war and a state of hostilities exist between the United States of America and their territories, and the United Kingdom of Great Britain and Ireland and the dependencies thereof, and captures and seizures of enemies' property authorized and enjoined on all officers of the United States; this libellant, therefore, in and with the United States sloop-of-war Peacock, and her officers and crew, on the twenty-ninth day of April last past, did subdue, seize, and take upon the high seas the said British sloop-of-war Epervier, with her apparel, appurtenances, guns, and other implements of war, and have brought the said British sloop-of-war Epervier into the port of Savannah, and within the jurisdiction of this honorable court.

Secondly. That the said British sloop-of-war Epervier, at the time of the said capture thereof, was under the command of Richard Wales, esq., an officer in the service of his Britannic Majesty, and this libellant avers the British sloop-of-war Epervier, at the time of the said capture, was an armed British vessel, sailing under the flag of Great Britain, and navigated by subjects of Great Britain.

Lastly. This libellant doth allege, propound, and declare, that all and singular the premises are and were true, public, and notorious, and that by the law of the United States of America, as well as by the laws of nations, the said British sloop-of-war Epervier, with her tackle, apparel, guns, and other implements of war, became, and was, and is forfeited. And due proof being made, the libellant prays that the said British sloop-of-war Epervier, her tackle, apparel, guns, and other implements of war, may, by warrant under the seal of this court, be attached, and the usual process and monition of this court in this behalf be made; and all persons having or claiming any interest in the said British sloop-of-war Epervier, her tackle, apparel, guns, and other implements of war, or any part thereof, may be cited to appear at a special court of admiralty to be held at the court-house in the city of Savannah, in said district, on the twenty-eighth day of July instant, to answer the premises; and that right and justice may be duly administered in this behalf, and all due proceedings being had, that the said British sloop-of-war Epervier, her tackle, apparel, guns, and other implements of war, for the causes aforesaid and others appearing, may by the definitive sentence and decree of this honorable court be condemned as forfeited, to be distributed as by law is provided respecting the captures made by the public armed vessels of the United States.

C. HARRIS,
District Attorney.

Libel filed July 14, 1814.

JNO. J. BULLOCH, *Clerk.*

Let the usual process and monition issue, returnable the 28th day of July, 1814.

W. STEPHENS.

UNITED STATES OF AMERICA, } In the admiralty.
District of Georgia.

The President of the United States to the marshal of said district, greeting :

Whereas a libel hath this day been filed in the admiralty court of the United States for said district, by Lewis Warrington, esq., commander of the United States sloop-of-war Peacock, in behalf as well of the United States as of himself and the officers and crew of the said United States sloop-of-war Peacock, against the British sloop-of-war Epervier, her tackle, apparel, and guns, and other implements of war:

That war and a state of hostilities exist between the United States of America and their territories, and the United Kingdom of Great Britain and Ireland and the dependencies thereof, and captures and seizures of enemies' property authorized and enjoined on all officers of the United States: That the libellant, therefore, in and with the United States sloop-of-war Peacock, and her officers and crew, on the twenty-ninth day of April last past, did subdue, seize, and take upon the high seas the said British sloop-of-war Epervier, with her apparel, appurtenances, guns, and other implements of war, and have brought the said British sloop-of-war Epervier into the port of Savannah, and within the jurisdiction of this honorable court.

That the said British sloop-of-war Epervier, at the time of the said capture thereof, was under the command of Richard Wales, esq., an officer in the service of his Britannic Majesty: That the said sloop-of-war Epervier, at the time of the said capture, was an armed British vessel, sailing under the flag of Great Britain, and navigated by subjects of Great Britain: Now, therefore, you, the said marshal, are hereby commanded to arrest, detain, and take into your custody, possession, and safekeeping the said British sloop-of-war Epervier, until the court shall make further order in the premises, and for your so doing this shall be your sufficient warrant. Given under the seal of said court; and whatsoever you shall do in the premises, certify and make known to the judge of said court at Savannah on the twenty-eighth day of July instant, and have then and there this writ. Witness the honorable William Stephens, judge of said court, this fifteenth day of July, in the year of our Lord eighteen hundred and fourteen.

CHARLES HARRIS,
District Attorney.

[L. s.] JOHN J. BULLOCH, *Clerk.*

MARSHAL'S OFFICE, *July 16, 1814.*

By virtue of the within warrant of arrest to me, I have caused to be arrested the British sloop-of-war Epervier, her tackle, apparel, guns, &c., as within commanded.

The return of

JOHN EPPINGER, *M. D. G.*

UNITED STATES OF AMERICA, } In the admiralty.
District of Georgia,

*The President of the United States to the marshal of said district,
greeting :*

Whereas a libel hath this day been filed in the admiralty court of said district by Lewis Warrington, esq., commander of the United States sloop-of-war Peacock, stating that war and a state of hostilities exist between the United States of America and their territories, and the United Kingdom of Great Britain and Ireland and the dependencies thereof, and captures and seizures of enemies' property authorized and enjoined on all officers of the United States: That the libellant, therefore, in and with the United States sloop-of-war Peacock, her officers and crew, did, on the 29th day of April last past, subdue, seize, and take upon the high seas the British sloop-of-war Epervier, with her apparel, appurtenances, guns, and other implements of war, and has brought the said sloop-of-war Epervier into the port of Savannah, and within the jurisdiction of this honorable court: Now, therefore, you, the said marshal, are hereby commanded to cite and admonish all and every person and persons having or claiming any interest in the British sloop-of-war Epervier, her tackle, apparel, guns, and other implements of war, or any part thereof, to appear at a special court of admiralty to be held at the court-house in the city of Savannah, in said district, on the twenty-eighth day of July instant, to answer the premises, and that right and justice may be duly administered in this behalf. And whatsoever you shall do in the premises, certify and make known to the judge of said court at the time and place aforesaid, and have then and there this writ. Witness the honorable William Stephens, judge of the district court of the United States for the district of Georgia, this fifteenth day of July, in the year eighteen hundred and fourteen.

C. HARRIS,
District Attorney.

[L. S.] JOHN J. BULLOCH, *Clerk.*

All persons interested in the foregoing monition will take due notice.
JNO. EPPINGER, *Marshal.*

MARSHAL'S OFFICE,
Savannah, July 28, 1814.

In obedience to the within monition, I have caused all persons concerned to be cited, to appear before your honor this day, as within commanded.

The return of JNO. EPPINGER, *M. D. G.*

At a special court of admiralty held at the court-house in Savannah, on Thursday, 28th day of July, in the year of our Lord eighteen hundred and fourteen, before the honorable William Stephens :

Lewis Warrington, commander U. S. sloop- of-war Peacock, <i>vs.</i> British sloop-of-war Epervier.	}	Libel as prize of war.
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Warrant and monition returned—deposition of William Chesson taken

and reduced to writing. Proclamation made by the marshal, and this first default recorded by order of court.

Lewis Warrington, commander U. S. sloop- of-war Peacock, in behalf, &c.,	}	Libel as prize of war.
<i>vs.</i>		
British sloop-of-war Epervier, &c.		

Personally appeared William Chesson, midshipman on board said sloop-of-war Epervier, who being duly sworn, saith that said sloop-of-war Epervier was captured by the sloop-of-war Peacock, Lewis Warrington commander, on the twenty-ninth day of April last.

W. CHESSON.

Sworn to in open court, this 28th April, 1814, before me.

JNO. J. BULLOCH, *Clerk.*

At a court of admiralty held at the court-house in the city of Savannah, agreeably to adjournment, on Friday, 29th day of July, 1814, before the Hon. William Stephens :

Lewis Warrington, commander U. S. sloop- of-war Peacock, &c.,	}	Libel as prize of war.
<i>vs.</i>		
British sloop-of-war Epervier, &c.		

Proclamation made by the marshal, and this second default recorded by order of court.

At a court of admiralty held at the court-house in the city of Savannah, agreeably to adjournment, on Monday, the first day of August, 1814, before the Hon. William Stephens :

Lewis Warrington, commander of the U. S. } sloop of war Peacock, &c.,	}	Libel as prize of war.
<i>vs.</i>		
British sloop-of-war Epervier, &c.		

Proclamation made by the marshal, and this third default recorded by order of court.

United States vessel-of-war Peacock, } <i>vs.</i>	}	Libel as prize.
British sloop-of-war Epervier, &c.		

The United States vessel-of-war Peacock, commanded by Lewis Warrington, esq., captured his Britannic Majesty's ship-of-war Epervier, and brought her into this port; she has been libelled by the district attorney. The usual monition has been published, and proclamations made, and defaults duly recorded. No claimant appearing, it is ordered, adjudged, and decreed that the said sloop-of-war Epervier, her tackle, apparel, guns, and other implements of war, be condemned as prize of war, to the captors, and sold after due notice by the marshal, and the proceeds be distri-

buted as the law directs respecting captures made by the public armed vessels of the United States, after payment of costs and charges.

W. STEPHENS.

AUGUST 1, 1814.

In admiralty.—United States,

vs.

British brig-of-war Epervier.

} Prize of war to the U. S. sloop
Peacock.

Mr. L. Tilton, left in charge of the Epervier, by Captain Warrington, until a regular condemnation had taken place, and as a midshipman, entitled to a proportion of prize-money, as well of specie as the sales of Epervier, and withal having been very sick, and now ordered on to Washington by the Secretary of the Navy with the flags of the Epervier—it is ordered that the marshal pay Mr. Tilton one hundred and twenty dollars on account of prize-money, he giving duplicate receipts on copies of this order.

W. STEPHENS,

District Judge.

To the MARSHAL of Georgia.

AUGUST 16, 1814.

The marshal will send a copy to the Secretary of the Navy.

[The following power of attorney from Hugh G. Campbell to Griffin L. Lamkin has nothing to do with the case of the Epervier, but was inserted by mistake.]

Procuration from H. G. Campbell to G. L. Lamkin.

UNITED STATES, *District of Georgia*:

Know all men by these presents, that I, Hugh G. Campbell, commanding the United States naval forces on the St. Mary's station, in the district aforesaid, have made, constituted, and appointed, and by these presents do make, constitute, and appoint Griffin L. Lamkin, esq., of Savannah, my true and lawful attorney and proxy for me, and in my name, behalf, and stead, as well as in behalf of all others whom I may lawfully represent in the matter of libels filed in the name of the United States on my information against all vessels and cargoes which may be seized or delayed by the flotilla under my command in the district aforesaid, to enter all appeals from the decrees of the said court in the premises, and the same to prosecute in the sixth circuit court of the United States for the said district, and to do and perform all matters and things lawful and necessary in this behalf, hereby giving to my said attorney my full and whole power and authority, and praying the said courts that he may be received as my lawful proxy in suing out and prosecuting the said appeal.

In witness whereof, I have hereunto subscribed my name, and affixed my seal, at St. Mary's, this 2d day of April, 1814.

HUGH G. CAMPBELL. [L. s.]

In presence of—

ARCH'D CLARK,

Notary Public.

ST. MARY'S:

Before me, Archibald Clark, notary public, by legal authority duly admitted, commissioned, and sworn, residing and practising in the town of St. Mary's, personally appeared Commodore Hugh G. Campbell, party to the foregoing letter of attorney, and acknowledged the same to be his act and deed, and that it was delivered for the purposes therein expressed.

An act being required, I have granted the same under my notarial form and seal, this 2d day of April, 1814.

ARCH'D CLARK, [L. s.]
Notary Public.

By virtue of the power in me vested by the foregoing procuration, I do hereby nominate Isaac Mines, of the city of Savannah, merchant, my true and lawful substitute, to act as the proxy of Hugh G. Campbell, esq., for the purposes mentioned in the foregoing procuration.

GRIFFIN L. LAMKIN,
Attorney for Hugh G. Campbell.

Done in open court, 2d November, 1814.

S. MORDECAI,
Notary Public.

Ordered that Isaac Mines, esq., be received as the proxy of Commodore Hugh G. Campbell for the purposes mentioned in the foregoing procuration.

Filed March 6, 1814.

S. MORDECAI,
Deputy Clerk.

Griffin L. Lamkin appeared in open court and presented letters of procuration from Hugh G. Campbell, esq., commanding the U. S. naval forces on the St. Mary's station, and prayed to be received as the lawful proxy of the said Hugh G. Campbell, esq., and those whom he represents, in terms of the said procuration, in this court, and that the said procuration may be filed. All which, by the court, is ordered accordingly.

W. STEPHENS.

APRIL 6, 1814.

DISTRICT OF GEORGIA, *in the admiralty*:

To the Hon. William Stephens, judge of the district court for the district aforesaid, having and holding admiralty jurisdiction:

Be it remembered, that on seventeenth day of May, in the year of our Lord one thousand eight hundred and fourteen, comes into court Lewis Warrington, esq., commander of the United States [sloop-of-war] Peacock, on behalf as well of the said United States as of himself, the officers, and crew of the said United States sloop-of-war Peacock, by Charles Harris, United States attorney, who doth libel, propound, and allege, as follows:

First. That war exists between the United States of America and their territories, and the United Kingdom of Great Britain and Ireland and the

dependencies thereof, and captures and seizures of enemies' property authorized and enjoined on all public armed vessels of the United States.

Second. That on the high seas, on the twenty-ninth day of April last past, the said United States sloop-of-war Peacock, her officers and crew, captured the British sloop-of-war Epervier, having on board one hundred and seventeen thousand nine hundred and three dollars, or thereabouts, in boxes, which dollars this libellant avers was the property of the government of Great Britain, or of subjects of the said government, and enemies of the United States.

Third. That the said one hundred and seventeen thousand nine hundred and three dollars, or thereabouts, in boxes, as aforesaid, being the property of the government of Great Britain, or of subjects of the said government, and liable to condemnation as prize of war, is now in the port of Savannah and within the jurisdiction of this honorable court for legal inquiry.

This libellant, in behalf as aforesaid, doth aver that all and singular the premises are and were true, public, and notorious, and that due proof being made, he humbly prays that the said one hundred and seventeen thousand nine hundred and three dollars, or thereabouts, may by warrant, under the seal of this honorable court, be attached, and that the usual process and monition in this behalf be made, and that all persons concerned or interested in the said sum of money in gold and silver aforesaid, or any part thereof, may be cited to appear at a special court of admiralty to be held at the court-house, in the city of Savannah, in the district aforesaid, on the first day of June, to answer the premises; and that right and justice may be duly administered in this behalf, and all due proceedings being had, that the said sum of money in gold and silver may, by the definitive sentence and decree of this honorable court, be condemned as prize of war and forfeited, to be distributed as by law is provided in cases of captures made by the public armed vessels of the United States, and according to the course of proceeding in this honorable court.

C. HARRIS,
District Attorney.

Let the usual monition issue, returnable the —.

UNITED STATES OF AMERICA, } In the admiralty.
District of Georgia.

The President of the United States to the marshal of said district, greeting:

Whereas a libel hath this day been filed in the admiralty court of the United States for the district aforesaid, by Lewis Warrington, esq., commander of the United States sloop-of-war Peacock, against one hundred and seventeen thousand nine hundred and three dollars, or thereabouts, in boxes, taken from on board the British sloop-of-war Epervier: Now, therefore, you, the said marshal, are hereby commanded to arrest, detain, and take into your custody, possession, and safekeeping the said sum of one hundred and seventeen thousand nine hundred and three dollars until the court shall make further order in the premises; and for your so doing this shall be your sufficient warrant.

Given under the seal of said court; and whatsoever you shall do in the premises, certify and make known to the judge of said court at Savannah, on the first day of June next, and have then and there this writ.

Witness the honorable William Stephens, judge of said court, this seventeenth day of May, in the year eighteen hundred and fourteen.

CHARLES HARRIS,
District Attorney.

[L. S.] JNO. J. BULLOCH, *Clerk.*

MARSHAL'S OFFICE, GEORGIA,
Savannah, May 24, 1814.

Served a copy of the within on James Marshall, cashier of the Planters' Bank, in person.

The return of

JNO. J. ROBERTS,
Deputy Marshal.

SAVANNAH, May 26, 1814.

By virtue of the within warrant to me directed, I have arrested the sum of \$117,903 09, as within commanded, and have the same in bank.

The return of

JNO. EPPINGER, *M. D. G.*

UNITED STATES OF AMERICA, }
District of Georgia. } In the admiralty.

The President of the United States to the marshal of said district, greeting:

Whereas a libel hath this day been filed in the admiralty court of the United States for the district aforesaid, by Lewis Warrington, esq., commander of the United States sloop-of-war *Peacock*, on behalf as well of the said United States as of himself, the officers, and crew of the said United States sloop-of-war *Peacock*, stating that war exists between the United States of America and their territories, and the United Kingdom of Great Britain and Ireland and the dependencies thereof, and captures and seizures of enemies' property authorized and enjoined on all public armed vessels of the United States: 'That on the high seas, on the twenty-ninth day of April last past, the said United States sloop-of-war *Peacock*, her officers and crew, captured the British sloop-of-war *Epervier*, having on board one hundred and seventeen thousand nine hundred and three dollars, or thereabouts, in boxes, which dollars this libellant avers was the property of the government of Great Britain, or of the subjects of said government, and enemies of the United States: That the said one hundred and seventeen thousand nine hundred and three dollars, or thereabouts, in boxes, as aforesaid, being the property of the government of Great Britain, or of subjects of the said government, and liable to condemnation as prize of war, is now in the port of Savannah, and within the jurisdiction of this honorable court for legal inquiry: Now, therefore, you, the said marshal, are hereby commanded to cite and admonish all and every person and persons having or claiming any interest in the said one hundred and seventeen thousand nine hundred and three dollars, or any part thereof, to appear at a special court of admiralty to be held at the court-house in the city of Savannah, in the district aforesaid, on the first day of June, to answer the premises, and that right and justice may be duly administered in this behalf. And whatsoever you shall do in the

premises and in this behalf, certify and make known to the judge of said court at the time and place aforesaid, and have then and there this writ.

Witness the honorable William Stephens, judge of the district court of the United States for the district of Georgia, this seventeenth day of May, in the year of our Lord one thousand eight hundred and fourteen.

CHARLES HARRIS,

District Attorney.

[L. S.] JNO. J. BULLOCH, *Clerk.*

All persons interested in the foregoing monition will take due notice.

JOHN EPPINGER, *Marshal.*

Marshal's return.

MARSHAL'S OFFICE, *June 1, 1814.*

In obedience to the within monition, I have caused all persons concerned to be cited to appear before your honor this day, by publishing the same in the Evening Ledger, and posting a copy at the court-house in Savannah.

The return of

JNO. EPPINGER, *M. D. G.*

Court met on the 10th of June, 1814, at the court-house in Savannah. Present, Hon. Wm. Stephens, judge.

The United States vessel-of-war Peacock,	} Libel as prize.
<i>vs.</i>	
\$117,903 captured in the Epervier.	

The United States vessel-of-war Peacock, commanded by Lewis Warington, esq., in the late capture of his Britannic Majesty's sloop-of-war Epervier, brought into this port, captured also, in dollars, one hundred and seventeen thousand nine hundred and three dollars, which has been libelled by the district attorney. The usual monition has been published, and proclamations made, and the defaults duly recorded. No claimant appearing, it is ordered, adjudged, and decreed, that the said sum of one hundred and seventeen thousand nine hundred and three dollars be condemned as prize of war to the captors, to be distributed as the law directs on captures made by the public armed vessels of the United States, after payment of costs and charges.

W. STEPHENS,

District judge, Georgia.

Ordered that a certified copy of the above be sent to the Secretary of the Navy, as also a copy of the demand of the marshal for his commissions, and that the same be forwarded by Mr. Attorney for the district.

W. STEPHENS.

JUNE 10, 1814.

*Marshal's statement.*UNITED STATES, *District of Georgia :*

Lewis Warrington, esq., commander of the U. S. sloop-of-war Peacock,	} In the admiralty.— Libel and condemnation as prize.
vs.	
117,903 dollars taken from on board the British sloop-of-war Epervier.	

Amount arrested	-	-	-	-	-	-	\$117,903 09
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Charges.

Taxed costs	-	-	-	-	-	\$93 91	
Commission	-	-	-	-	-	1,473 78	
							1,567 69
Balance	-	-	-	-	-	-	116,335 40

Distribution.

One moiety to the captors	-	-	-	-	58,167 70	
One moiety to the United States, paid cashier of Planters' Bank	-	-	-	-	58,167 70	
						116,335 40

MARSHAL'S OFFICE,
*August 18, 1814.*JNO. EPPINGER,
Marshal.

Commission on \$117,903 09, charged and disallowed by government	-	-	-	-	-	1,473 78
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Distribution.

One moiety to the captors	-	-	-	-	736 89	
One moiety to the United States, paid to cashier of Planters' Bank	-	-	-	-	736 89	
						1,473 78

MARSHAL'S OFFICE,
*August 18, 1814.*JNO. EPPINGER,
*Marshal.*PLANTERS' BANK,
Savannah, 15th _____, 181 .

Received of John Eppinger, esq., marshal of Georgia, fifty-eight thousand one hundred and sixty-seven dollars and seventy cents, on account of Thomas T. Tucker, esq., Treasurer of the United States, which sum is entered to his credit in the books of this bank, having signed quadruplicate receipts.

J. MARSHALL, *Cashier,*
By JAS. HUNTER, *Teller.*

DISTRICT OF COLUMBIA, *Washington County*:

Whereas I am fully authorized by the annexed power, jointly and severally with Lyttleton W. Tazewell, to transact all business relative to the interests of the officers and crew of the United States sloop-of-war Peacock, in the prize brig the Epervier, and particularly to hold the proceeds to which the said officers and crew may be entitled in the said prize vessel: Now, by virtue of said power and authority so vested, I do hereby nominate and appoint Charles Harris, esq., attorney for the district of Georgia, my lawful substitute and procurator, to demand of and to receive from John Eppinger, esq., marshal for the district aforesaid, the amount of prize money now in his custody belonging to said officers and crew, and to execute an acquittance or receipt therefor, and to do and perform every act, on the payment over to him of said money, which I might do by virtue of the said delegation of power if personally present, and to hold the said prize money subject to my order. And I do hereby, for and on behalf of said officers and crew, ratify and confirm every and all the acts of my said procurator in the premises.

Given under my hand and seal at Washington city, this 24th day of February, 1815.

HERMON THORN. [L. S.]

Signed and sealed in the presence of

D. RANDALL,
ALEX. KERR.

DISTRICT OF COLUMBIA, *Washington County*, ss:

Be it known, that on the twenty-fourth day of February, in the year eighteen hundred and fifteen, personally appeared before me, a notary public for the county of Washington, in the District of Columbia, duly commissioned and qualified, Hermon Thorn, who acknowledged the above power, to which his name is affixed, to be his act and deed.

In testimony whereof, I have hereunto set my hand
[L. S.] and affixed my notarial seal, the day
and year above written.

ALEXANDER KERR,
Notary Public.

Then follows the power of attorney from the officers and crew of the sloop-of-war Peacock to Hermon Thorn and Lyttleton W. Tazewell, which is a voluminous document, and can be furnished if required.

GEO. GLEN, *Clerk.*

UNITED STATES OF AMERICA, *District of Georgia*, ss:

I, George Glen, clerk of the district court of the United States for the district of Georgia, do hereby certify that the preceding and annexed writing is a true and perfect transcript of the record and proceedings remaining in said court in the cause therein mentioned, taken from and by me carefully compared with the originals filed, and being of record, in my office.

In witness whereof, I have hereto set my hand and affixed the seal of the
[L. S.] said district court, this twenty-ninth day of December, in the
year of our Lord one thousand eight hundred and forty-five.

GEORGE GLEN, *Clerk.*

UNITED STATES OF AMERICA, *District of Georgia, ss:*

I, John C. Nicoll, judge of the district court of the United States for the district of Georgia, do hereby certify that George Glen, who signed the within certificate, is, and was at the time of signing the same, the clerk of the district and circuit courts of the United States for the district of Georgia; that full faith and credit ought to be given to his acts and attestations as such, and that his said certificate and authentication of the foregoing transcript is in due form.

In witness whereof, I have hereto set my hand this twenty-ninth day of December, in the year of our Lord 1845.

JOHN C. NICOLL,
District Judge.

EXHIBIT B.

NAVY DEPARTMENT,
March 4, 1814.

SIR: Agreeably to your intimation, I have the honor to transmit herewith a list of ships and vessels of the navy of the United States, with the rate, station, and name of the commander of each.

I am, very respectfully, your obedient servant,
W. JONES.

The Hon. JOHN GAILLARD,
Chairman of the Naval Committee, Senate.

Extract from the list above mentioned.

Name.	Rate.	Station.	Commander.
* * *	*	* * *	* * *
Constellation	36	Norfolk, under sailing orders -	Charles Gordon.
Peacock -	18	New York, under sailing orders	Lewis Warrington.
Enterprise -	14	Cruising - - - -	James Renshaw.

A true extract from the record.

Attest:

JOHN APPLETON,
Chief Clerk Navy Department.

DECEMBER 21, 1846.

EXHIBIT C.

NAVY DEPARTMENT,
October 3, 1814.

SIR: Agreeably to your request, I have the honor to enclose the official account, and other papers, relating to the capture of the enemy's sloop-of-war Epervier, on the 29th April last, by the United States sloop-of-war Peacock, commanded by Captain Warrington.

If the relative force and comparative effect of the fire of the combatants, and the speedy termination of the contest, though protracted by the early loss of the Peacock's fore-yard, be taken as the criterion, then does it display a steady valor and superior skill on the part of the commander, officers, and crew of the Peacock, which may fairly challenge any single action on record.

I have the honor to be, very respectfully, sir,

Your obedient servant,

W. JONES.

THE HON. CHARLES TAIT,
Chairman of the Naval Committee, Senate.

U. S. SLOOP PEACOCK,

At sea, lat. $27^{\circ} 47'$, long. $80^{\circ} 9'$, April 29, 1814.

SIR: I have the honor to inform you that we have this morning captured, after an action of forty-two minutes, his Majesty's brig Epervier, rating and mounting eighteen thirty-two pound carronades, with one hundred and twenty-eight men, of whom eight were killed and fifteen wounded, (according to the best information we could obtain.) Among the latter is her first lieutenant, who has lost an arm and received a severe splinter wound on the hip. Not a man in the Peacock was killed, and only two wounded—neither dangerously so.

The fate of the Epervier would have been determined in much less time, but for the circumstance of our fore-yard being totally disabled by two round shot in the starboard quarter, from her first broadside, which entirely deprived us of the use of our fore and foretopsails, and compelled us to keep the ship large throughout the remainder of the action. This, with a few topmast and topgallant backstays cut away, and a few shot through our sails, is the only injury the Peacock has sustained. Not a round shot touched our hull; our masts and spars are as sound as ever. When the enemy struck, he had five feet water in his hold, his maintopmast was over the side, his main boom shot away, his foremast cut nearly in two and tottering, his fore-rigging and stays shot away, his bowsprit badly wounded, and forty-five shot holes in his hull, twenty of which were within a foot of his water-line, above and below. By great exertions we got her in sailing order just as dark came on.

In fifteen minutes after the enemy struck, the Peacock was ready for another action in every respect but her fore-yard, which was sent down, fixed, and had the foresail set again in forty-five minutes; such was the spirit and activity of our gallant crew.

The Epervier had under her convoy an English hermaphrodite brig, a

Russian and a Spanish ship, which all hauled their wind, and stood to the ENE. I had determined upon pursuing the former, but found that it would not answer to leave our prize in her then crippled state; and the more particularly so, as we found she had one hundred and twenty thousand dollars in specie, which we soon transferred to this sloop. Every officer, seaman, and marine did his duty, which is the highest compliment I can pay them.

I am, respectfully,

L. WARRINGTON.

The foregoing are truly copied from the files of the Navy Department.

JOHN APPLETON,

Chief Clerk.

DECEMBER 21, 1846.

EXHIBIT D.

SAVANNAH, GA., May 1, 1814.

SIR: I have the honor of informing you of my arrival here in late his B. M. brig Epervier, of 18 32-pound carronades, Captain Wales, captured by the sloop Peacock, on Friday morning, the 29th, off cape Carneveral, after an action of 45 minutes, in which time she was much cut up in hull, spars, rigging, and sails, with upwards of five feet water in her hold, having the advantage of the weather-gauge. She lost eight killed and fifteen wounded; among the latter her first-lieutenant, who has lost his arm. I am happy to say the Peacock received no material injury—her fore-yard and two men slightly wounded. She received not one shot in her hull. The brig had upwards of \$100,000 on board.

I have the honor to be, respectfully, your obedient servant,

JOHN B. NICOLSON.

HON. WILLIAM JONES.

NAVY DEPARTMENT, December 23, 1846.

A true copy.—Attest:

JOHN APPLETON,

Chief Clerk.

EXHIBIT E.

NAVY DEPARTMENT, July 28, 1814.

SIR: Enclosed herewith is a copy of the opinion of the Attorney General of the United States on the claim of the marshal of Georgia for a commission of one and a quarter per cent. on the amount of specie decreed to the captors of the sloop Epervier; by which opinion, the claim appears to be inadmissible.

I have the honor to be, very respectfully, your obedient servant,

W. JONES.

CHARLES HARRIS, Esq.,

District Attorney, Savannah, Georgia.

NAVY DEPARTMENT, *December 12, 1846.*

A true copy of record.—Attest:

JOHN APPLETON,
Chief Clerk Navy Department.

EXHIBIT F.

NAVY DEPARTMENT, *June 11, 1814.*

SIR:

In respect to your prize, the Epervier, the department is disposed, after she shall have gone through the regular ordeal of the district court, to purchase her for the public service at her fair and full value; for which purpose I am ready to negotiate with any agent authorized by the captors, for the purchase of the Epervier, together with all her armament, equipment, and stores of what kind soever, including every thing captured on board and belonging to the vessel. Whatever, therefore, may have been taken out of the prize, either for the use of the Adams or of the Peacock, will, of course, be included, and will thus supersede the necessity of a distinct valuation of those articles. It will, however, be desirable that as little should be taken out of the prize as possible, as it will be difficult to replace the articles on that remote and unprovided station.

The department is not disposed to become a competitor at a public sale, as there can be no real private bidders, and it will be better that the court should authorize either a public sale or a private one, by the agent of the captors, to the government of the United States.

I am, respectfully, &c.,

W. JONES.

LEWIS WARRINGTON, Esq.,
*Commanding U. S. ship Peacock, Savannah.*NAVY DEPARTMENT, *December 14, 1846.*

The foregoing is a true extract from the records of this department.

JOHN APPLETON,
Chief Clerk.

EXHIBIT G.

NAVY DEPARTMENT, *June 16, 1814.*

SIR: Your letter of the 6th instant is received. The Navy Department has no interest in, or charge of, prize vessels captured by ships of the United States, until after condemnation in the admiralty court, and then only where the department becomes the purchaser, either at public sale or by agreement with the captors; and until that point is decided, I can give no instructions respecting the Epervier.

It is, however, proper that the prize and her stores should be preserved in good order for the benefit of the captors. Lieut. Walpole, however, will

lend you any necessary assistance in men, and I presume Captain Warrington has left an agent to represent the interest of the captors, and to whom you will apply for whatever may be required.

I am, respectfully, &c.,

W. JONES.

Midshipman N. TILTON,
U. S. Navy, Savannah, Georgia.

DECEMBER 14, 1846.

A true copy of record.

JOHN APPLETON,
Chief Clerk Navy Department.

EXHIBIT H.

NAVY DEPARTMENT, *July 24, 1814.*

SIR: I have this moment received a letter from C. Harris, esq., attorney for the district of Georgia, saying, "I proceeded immediately to libel the Epervier, and shall obtain a final condemnation in the beginning of August, and an early sale will take place, unless you wish it or order it postponed. I suppose you will order her to be purchased, as she cannot bring anything like her value."

I regret that no agent for the captors has yet appeared to negotiate with this department for the sale of the Epervier, at an equitable and liberal price, which I am disposed to give, and which, by agreement of the parties, the court would have sanctioned. There appears, however, no alternative but a public sale, at which there will be no real bidder but the public at anything like her value; and justice to the captors forbids that she should be sacrificed. I have, therefore, determined upon the highest price which I feel myself authorized to go in the purchase of the Epervier, for the service of the navy of the United States. You are, therefore, hereby authorized to purchase the Epervier at public sale, at a sum not exceeding fifty-five thousand dollars, including in the purchase all her armament, ammunition, provisions, stores of all kinds in every department, iron and other ballast, equipments and appurtenances of every description which belonged or was attached to the said vessel at the time of her capture, and free from all charge against said vessel to the day of the sale, and also of the costs of condemnation and court charges. On this subject, you will have a clear understanding with the district attorney and the marshal, and recite the foregoing conditions in the bill of sale from the marshal.

I am, respectfully, &c.,

W. JONES.

A. S. BULLOCH,
Navy Agent, Savannah.

A copy of record.—Attest:

JOHN APPLETON,
Chief Clerk Navy Department.

EXHIBIT I.

Extract from "American State Papers," (volume of Naval Affairs,) page 426.

UNITED STATES, *District of Georgia* :

Marshal's sale on the 11th August, 1814, at Savannah.

Lewis Warrington, esq., commander of the United States sloop-of-war Peacock,	} In the admiralty.— Libelled and condemned as a prize.
<i>vs.</i> The British sloop-of-war Epervier.	

Amount of sale of the Epervier, her tackle, &c., to the Navy Department - - - - - \$55,000 00

Charges.

Advertising	-	-	-	-	\$2 25
Taxed costs of court	-	-	-	-	76 71
Custody fees	-	-	-	-	64 00
Irvine—negro hire, lighterage, &c.	-	-	-	-	95 50
Bulloch—drayage, pilotage, &c.	-	-	-	-	305 45
Hunter, Mimis, and Henry—storage, &c.	-	-	-	-	143 50
Green, harbor-master	-	-	-	-	9 35
Woodbridge, landing and shipping guns	-	-	-	-	17 00
Commission	-	-	-	-	693 75
					<hr/> 1,407 50
					<hr/> 53,592 50

Distribution.

One moiety to the captors	-	-	-	-	\$26,796 25
One moiety to the United States	-	-	-	-	26,796 25
					<hr/> 53,592 50

JNO. EPPINGER,
Marshal.

MARSHAL'S OFFICE,
Savannah, August 12, 1814.

Extract from a statement to the Navy Department, by the Fourth Auditor of the Treasury, of prize money received by the United States, entitled "Statement of the proceeds of prizes received from and after the 20th June, 1812," dated September 16, 1818. Extracted from State Papers, (Naval Affairs,) page 556.

Names of prizes.	Captured by	Where condemned.	Paid over by	When paid.	Amount paid.
* * * *	* *	*	* *	* *	* *
Ship Epervier -	Ship Peacock	Georgia -	J. Eppinger	August 14, 1814	\$26,796 25

EXHIBIT K.

Extract from the decree of the district court of the United States for the district of New York, in the case of

“The United States of America, and the officers and crew of the United States frigate United States,

vs.

“The frigate Macedonian, her tackle, apparel and furniture, arms, stores, and ammunition,” extracted from State Papers, (Naval Affairs,) page 425; [showing that this decree is in almost the exact language of the decree of condemnation in the case of the Epervier and the *whole* amount of the proceeds of the Macedonian was paid to the captors: therefore, as this decree decreed the proceeds of the Macedonian to the captors, equally so did the decree in the case of the Epervier decree the proceeds to her captors, and *not* to the captors and the United States jointly; otherwise each would have been mentioned as in the decree on the following page, in the case of the Constitution *vs.* the Cyane:]

“The court doth pronounce, decree, and declare that the said frigate or ship Macedonian, her tackle, apparel and furniture, and the arms, stores, and ammunition taken on board of the same, be adjudged and condemned as good and lawful prize to the commander, officers and crew of the said United States ship-of-war United States, the captors thereof.”

In the case, however, of the Cyane, a ship of *inferior* force, captured by the United States ship Constitution, the decree of the court decrees the Cyane to be the property of the *United States* and the captors, as the following decree will show; and as in the case of the Epervier, the decree decrees the property *not* to the *United States* and the captors, as in the case of the Cyane, but to the captors, the decree of the Epervier decrees the whole to the captors.

“The United States of America, and the officers and crew of the United States frigate Constitution,

vs.

“The ship Cyane, her armament, tackle, apparel, furniture, and stores,”
[from State Papers, “Naval Affairs,” page 418.]

“It is ordered, sentenced, and decreed by the court, that the said ship Cyane, her armament, tackle, apparel and furniture, and stores, be and the same are hereby condemned as good and lawful prize to the *United States* and the captors aforesaid: and it is further ordered that the said ship Cyane, her armament, tackle, apparel and furniture, and stores, be sold by the marshal according to law.”

EXHIBIT L.

Extracts from decisions of the United States courts, showing that to whomsoever prize property is condemned, it vests the right to such property, or its proceeds, in such persons or corporation. If *condemned to the captors*, then the decree vests it in the captors: if *condemned to the United States*, then the decree vests it in the United States.

"If the national character of captured property appears doubtful, or even neutral, and no claim is interposed, the court will delay the final decree for a reasonable time; which time has, by the general usage of nations, been fixed to a year and a day after the institution of the prize proceedings; and if no claim is made within that time, the property is deemed abandoned, and is *condemned to the captors*, for contumacy and default of the supposed owners."—The Harrison, 1 Wheaton, 298.

"But if the capture be made by a non-commissioned captor, the prize will be *condemned to the United States*."—3 Peters' Digest, page 367. The Pizarro, 2 Wheat., 4 Cond. Rep., 103.

"Property forfeited under a municipal law, but taken trading with the enemy, was *condemned to the captors*, not to the United States."—3 Peters' Digest, page 376. The Rapid, 1 Gallis' C. C. R., 295. The St. Lawrence, *ibid*, 472.

"The vessel and cargo were *condemned as prize to the captors*."—3 Peters' Digest, page 377. The Alexander, 8 Cranch, 169; 3 Cond. Rep., 72.

"If captured on the high seas by a commissioned vessel, the property may be *condemned to the captors* as enemy's property; if captured by an uncommissioned ship, the capture is still valid, and the property must be *condemned to the United States*."—3 Peters' Digest, page 378. The Caledonian, 4 Wheat., 100; 4 Cond. Rep., 401.

These repeated judicial decisions prove, beyond all doubt, that when the courts of the United States use the words "the captors," they mean the officers and crew of a ship of war, and not the United States.

EXHIBIT M.

Communication of the Navy Department to the chairman of the Committee on Naval Affairs, in the case of the *Gurriere*, showing that the usage of the Navy Department is to consider the *number of guns* of each vessel as the *criterion* which decides the captured vessel to be of equal or superior *force* to the vessel making the capture.

[From State Papers, "Naval Affairs," page 275; communicated to the House of Representatives November 25, 1812.]

NAVY DEPARTMENT,
November 21, 1812.

SIR: In order to enable the committee to form a satisfactory opinion as to the compensation to be provided for the officers and crew of the frigate *Constitution*, for the capture and subsequent destruction of the British frigate the *Gurriere*, I have the honor to state to you that the *Constitution*

rated 44 and mounted 55 guns; that the Gurriere rated 38 and mounted 54 guns. The Gurriere, although entirely dismasted, &c., * * *
I am, respectfully, &c.,

PAUL HAMILTON.

Hon. B. BASSETT.

EXHIBIT N.

RESOLUTION expressive of the sense of Congress relative to the victory of the Peacock over the Epervier.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be requested to present to Captain Lewis Warrington, of the sloop-of-war Peacock, a gold medal, with suitable emblems and devices; and a silver medal, with like emblems and devices, to each of the commissioned officers, and a sword to each of the midshipmen and to the sailing-master, of the said vessel, in testimony of the high sense entertained by Congress of the gallantry and good conduct of the officers and crew, in the action with the British brig Epervier, on the twenty-ninth day of April, in the year one thousand eight hundred and fourteen, in which action the decisive effect and great superiority of the American gunnery were so signally displayed.

Approved October 21, 1814.